

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9275 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE D.H.WAGHELA SD/-

and

HON'BLE MR.JUSTICE D.A.MEHTA SD/-

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?
1 to 5 NO

N.J.DEVANI BUILDERS PVT.LTD.

Versus

SALES TAX OFFICER (4) CITY CIRCLE - 8 AHMEDABAD

Appearance:

1. Special Civil Application No. 9275 of 2003
MR KH KAJI for Petitioner No. 1
MR UR BHATT AGP for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE D.H.WAGHELA
and
HON'BLE MR.JUSTICE D.A.MEHTA

Date of decision: 04/09/2003

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE D.H.WAGHELA)

1. RULE. Mr.U.R.Bhatt, learned A.G.P., waived service for the respondent.

2. After the petition being argued at some length, there was a limited consensus that the impugned order dated 31.3.2003 at Exh.B is the assessment in respect of only the accounting year 1998-99, that it is carried out ex parte and that it does not take into consideration the tax deducted at source. There is also no dispute about the fact that the petitioner's attempt at introducing the T.D.S. certificates by way of rectification application has also failed. In these circumstances, the interest of justice would be served, in the peculiar facts and circumstances of the case, if the aforesaid assessment order is set aside with a direction to complete the regular assessment within six weeks as suggested by the learned counsel. The learned A.G.P., Mr.U.R.Bhatt, fairly conceded, on instructions, that, pursuant to such order, the assessment will be completed within six weeks from today provided the petitioner-assessee would co-operate. As for the related dispute regarding the application dated 24.9.2002 of the petitioner for taking benefit of the scheme introduced by the provisions of section 41-AA of the Sales Tax Act, it was agreed that that application is required to be decided, the decision is required to be put into black and white and, as and when such decision was taken in writing, if need be, after affording the petitioner an opportunity of being heard, such decision should be communicated to the petitioner. It would also thereafter be open for the petitioner to challenge such decision, if so advised, or to press for regular assessment in respect of the years in respect of which the assessment is pending.

3. There being broad consensus on the aforesaid lines, the petition is not pressed for any further relief upon the following directions being issued. Accordingly, it is directed that:-

(a) the impugned assessment in respect of the accounting year 1998-99 dated 31.3.2003 is set aside. The respondent authorities shall take up the process of re-assessment de novo and complete the same preferably within a period of six weeks from today and the petitioner shall co-operate in the proceeding; and

(b) the application dated 24.9.2002 of the petitioner to avail the scheme under section 41-AA of the Sales Tax Act shall be decided by the competent officer within a period of four weeks after

affording the petitioner an opportunity of being heard and the decision taken thereon shall be communicated in writing within a further period of one week after the date of decision.

4. During the fresh assessment proceedings, under the direction as above, the attachment of the bank account of the petitioner with Bank of India, Memnagar Branch, in respect of the alleged due of Rs.8,24,400/- shall be lifted and the officer concerned shall inform accordingly to the bank concerned within a period of three days from today. Rule is made absolute to the aforesaid extent with no order as to costs.

Sd/-

(D.H.Waghela, J.)

Sd/-

(D.A. Mehta, J.)

(KMG Thilake)